

OSHA's Enforcement of Construction Safety and Health Regulations

Since its founding in 1970, the U.S. Occupational Safety and Health Administration (OSHA) has been responsible for enforcement of workplace safety and health standards in the United States. OSHA enforces labor law or delegates such enforcement powers to 21 states, Puerto Rico, and the Virgin Islands.¹ OSHA state plans may have more-stringent rules.

The OSHA construction standard, 29 CFR 1926, underlies enforcement.² In construction, since 1994 the agency has concentrated on fall protection, in an effort to reduce the leading cause of work-related deaths in the industry (charts 47a and 47b; see chart 36b). (Some scaffold-related violations involve fall hazards.)

Of 20,276 inspections that OSHA conducted in construction in 2001, 1,501 (7.4%) covered health, rather than safety, whereas, for all industries, health inspections are 20% of the total. (John Franklin, OSHA Directorate of Construction, personal communication, March 2002). (Because state-plan inspection systems differ from those of OSHA, state-plan numbers are not included here.)

Although the number of inspections (of employers) has increased over the years, the number of worksites visited is estimated to be much lower than the number of inspections, given that OSHA inspects 3 to 3½ employers on each construction site visited.³

And OSHA's resources continue to be limited. The most recent published number of worksites, from the Census Bureau, estimated there were 7 million establishments in all industries and 700,000 construction establishments in the United States in 1999, but the number of worksites – at least, in construction – would be larger.⁴ That same year, OSHA had 2,324 inspectors, including state-plan inspectors, for all industries nationwide (John Franklin, OSHA, personal communication, April 2002). So, at best, the ratio is more than 3,000 sites (in all industries) for each inspector.

With its limited resources, OSHA appears to inspect some types of construction worksites more than others. David Weil examined OSHA inspection reports for the seven years 1987-93 for the nation's 2,060 largest construction contractors. Using data that included state-plan jurisdictions, he found that OSHA was likely to inspect union contractors' sites about 10% more often than sites of non-union contractors.

The analysis showed also that OSHA "devotes a substantial percentage of its [enforcement] resources" to worksites of very large companies, even though compliance inspections of mid-size and smaller companies produced a higher proportion of citations. For instance, in 1993, 30% of the inspections of Weil's sample produced serious violations, compared with 46% of all other construction inspections.⁵ OSHA's inspection-targeting procedures reportedly have not changed substantially since the years studied (H. Berrien Zettler, OSHA Directorate of Construction, personal communication, April 2002).

Between 1987 and 2001, penalties per citation increased ninefold (see chart 47c), which may be explained partly by increases in the fines that OSHA is able to levy for citations. Also, the OSHA focused-inspection program, begun in 1994, is intended to allow compliance officers to spend more time on worksites where greater hazards may exist. In 2001, 8.4% of OSHA construction inspections were classified as focused (John Franklin, OSHA, March 2002). A third factor is that penalties listed are "current," which means that penalties for the most recent years may be lowered, if fines are protested.

Along with enforcement, OSHA has been working to encourage voluntary protection by contractors – for instance, through focused-inspection initiatives – and to highlight successful safety and health programs. OSHA non-enforcement activities include OSHA Training Institute courses on safety and health, which provided 10- and 30-hour training for 169,560 construction workers in 2001, and training grants to reach construction workers who might be particularly hard to reach or at high risk of work-related injuries and illnesses.

The effectiveness of OSHA's efforts remains unknown. As OSHA reported to Congress in 1997, the agency has lacked data to show whether its programs improve safety and health at worksites.⁶ A report prepared for OSHA in 2002 described efforts to develop a measure of effectiveness – by comparing a site's lost-workday injury and illness rates before an OSHA intervention with rates in the 2 years following.⁷ The report, however, pointed up the difficulty measuring results in construction, given that few construction sites exist for as long as 3 years.

1. OSHA jurisdiction is complicated, but this is a sketch: OSHA regulations cover private-sector construction activity in 29 states. OSHA regulations cover private-sector construction in the remaining 21 states through the operation of state-plan OSHA programs. These 21 states regulate construction performed by state- or local-government employees, as well. Also, 3 of the 29 states – Connecticut, New Jersey and New York – have state-plan programs that apply only to state- and local-government employees. And, under an executive order, OSHA regulations apply to all federal agencies.

2. Office of the Federal Register, National Archives and Records Administration, *Code of Federal Regulations*, Labor 29, part 1926 (Revised as of July 1, 2001). Washington, D.C.: U.S. Government Printing Office, 2001.

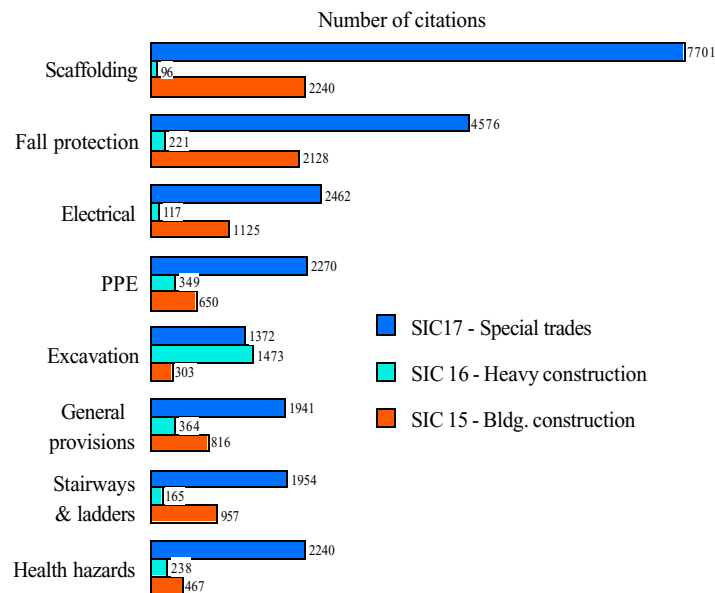
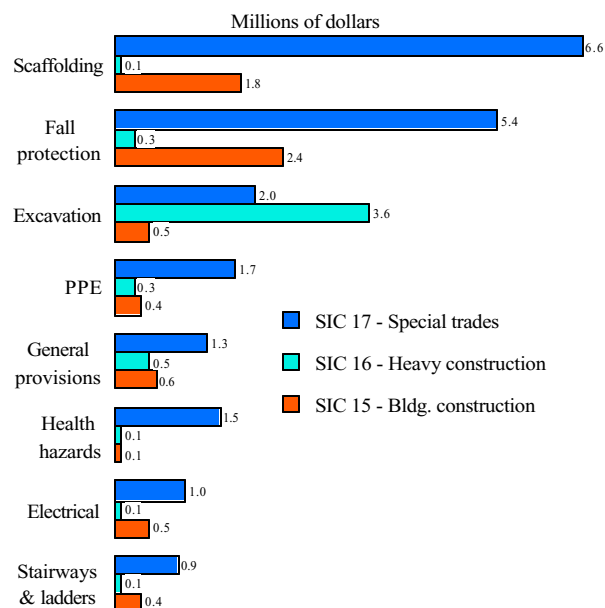
3. The estimate of employers visited per site excludes state-plan jurisdictions. Knut Ringen, *Scheduled Inspections in Construction: A Critical Review and Recommendations*, Report Prepared for The Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, in response to Contract No. B9F91522. Seattle, March 1999, pg. 15.

4. The estimate, used by OSHA and taken from the Census Bureau, County Business Patterns (www.census.gov/prod/2001pubs/cbp99/cbp99-1.pdf, table 1, page 9), is based on the number of establishments, which may differ from the number of worksites; the gap might be largest in construction, which is, by definition, based on temporary worksites. See Glossary. This chart book uses the Economic Census estimate of 656,448 establishments in 1997; see chart book page 2.

5. David Weil, Assessing OSHA Performance: New Evidence from the Construction Industry, *Journal of Policy Analysis and Management*, 20 (4): 651-74, Fall 2001, 657, 668, fig. 3.

6. Occupational Safety and Health Administration, *Strategic Plan: Occupational Safety and Health Administration FY 1997-FY2002*, 1997.

7. The Lexington Group and Eastern Research Group, An Estimate of OSHA's Progress from FY 1995 to FY 2001 in Attaining Its Performance Goal of Reducing Injuries and Illnesses in 100,000 Workplaces, Prepared for The Office of Statistics, Occupational Safety and Health Administration, Washington, D.C., Contract No. J-9-F-7-0043, March 15, 2002.

47a. OSHA citations in most-cited construction categories, by SIC grouping, 2001**47b. OSHA penalties in most-cited construction categories, by SIC grouping, 2001****47c. Number of OSHA inspections, total citations, total penalties, and average penalty per citation, construction, 1987-2001**

Year	Inspections	Citations	Total penalties	Average penalty per citation
1987	35,562	53,985	\$6,834,736	\$126
1988	31,073	55,174	\$9,791,204	\$177
1989	28,858	69,642	\$13,772,631	\$198
1990	24,310	67,871	\$15,618,493	\$230
1991	22,425	55,491	\$23,717,564	\$427
1992	22,664	49,769	\$26,006,198	\$522
1993	20,364	44,212	\$24,773,057	\$560
1994	22,766	48,854	\$33,999,882	\$696
1995	13,131	22,714	\$18,438,936	\$812
1996	11,532	16,713	\$17,715,305	\$1,060
1997	18,353	31,063	\$28,099,943	\$905
1998	18,338	29,277	\$24,904,322	\$851
1999	18,734	29,971	\$28,574,226	\$953
2000	19,647	30,781	\$30,770,596	\$1,000
2001	20,276	32,754	\$36,193,932	\$1,105

Note: All charts - Data cover categories having the largest number of citations and highest penalties. Citations and penalties were assessed by OSHA only, not the 23 state-OSHA jurisdictions. Scaffolding refers to all citations within subpart L, Fall protection refers to all citations within subpart M, Electrical refers to all citations within subpart K, PPE refers to all citations within subpart E (including respirators), Excavation refers to all citations within subpart P, General provisions refers to all citations within subpart C (including safety programs, jobsite inspections, and training), Stairways & ladders refers to all citations within subpart X, and Health hazards refers to all citations within subpart D (including hazard communication and lead). Years are fiscal years. SIC is Standard Industrial Classification (*see* Glossary).

Charts 47b and 47c - Penalties are "current," rather than initial assessments. So, penalties reported for the most recent years may be lowered in some cases after employers contest the penalties.

Source: Chart 47a and 47b - OSHA web site (www.osha.gov on 2/21/02).

Chart 47c - OSHA Directorate of Construction and Engineering, Washington, D.C., personal communication, March 2002.